

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TERESA ALCANTARA,

Plaintiff,

-v-

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

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No. 06 Civ. 13438 (RJS) (FM)

ORDER ADOPTING REPORT AND
RECOMMENDATION

RICHARD J. SULLIVAN, District Judge:

On November 22, 2006, Plaintiff Teresa Alcantara commenced this suit against Defendant Michael J. Astrue, in his capacity as the Commissioner of Social Security.¹ (Doc. No. 1.) Pursuant to 42 U.S.C. § 405(g), Plaintiff seeks review of the Commissioner's denial of her application for disability insurance benefits. The case was originally assigned to the Honorable Kenneth M. Karas, United States District Judge, who granted Defendant's request for an extension of time to submit an answer. (Doc. No. 2.) Defendant filed his Answer on March 30, 2007. (Doc. No. 3.) On September 4, 2007, this case was reassigned from Judge Karas to the undersigned. (Doc. No. 6.) The parties then submitted cross-motions for judgments on the pleadings (Doc. No. 10; Doc. No. 14), which the Court referred to the Honorable Frank Maas, United States Magistrate Judge, for a Report and Recommendation (Doc. No. 15).

On September 25, 2009, Judge Maas issued a Report and Recommendation recommending that Plaintiff's motion be granted in part, Defendant's motion be denied, and that the case be remanded for further proceedings. (Doc. No. 16.) In the Report and Recommendation, Judge Maas advised the parties that failure to file timely objections within ten

¹ Although the case was originally brought against Jo Ann B. Barnhart, Mr. Astrue's predecessor as Commissioner, Mr. Astrue's name is substituted for hers automatically under Federal Rule of Civil Procedure 25(d).

days from service of the Report would constitute a waiver of those objections. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). No party has filed objections to the Report, and the time to do so has expired. *Cf. Frank v. Johnson*, 968 F.2d 298 (2d Cir. 1993).

When no objections to a Report and Recommendation are made, the Court may adopt the Report if there is no clear error on the face of the record. *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). After conducting a review of the record, the Court finds that Judge Maas's thorough Report and Recommendation is not facially erroneous. Accordingly, the Court adopts the Report and Recommendation in its entirety. For the reasons set forth in the Report and Recommendation, the Court grants in part Plaintiff's motion for judgment on the pleadings, denies Defendant's motion for judgment on the pleadings, and remands the case to the Administrative Law Judge to provide a more detailed discussion of her credibility findings after considering the factors set forth in 20 C.F.R. § 404.1529(c)(3). The Clerk of the Court is respectfully directed to close the case.

SO ORDERED.

Dated: October 21, 2009
 New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE